



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
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Order Instituting Rulemaking on the Commission's Own
Motion to Assess and Revise the Regulation of
Telecommunications Utilities

Rulemaking 05-04-005
(Filed April 7, 2005)

Rulemaking for the Purpose of Revising General Order
96-A Regarding Informal Filings at the Commission

Rulemaking 98-07-038
(Filed July 23, 1998)

**RESPONSE OF PACIFIC BELL TELEPHONE COMPANY
D/B/A AT&T CALIFORNIA (U 1001 C) TO THE MOTION OF THE UTILITY
REFORM NETWORK AND THE DIVISION OF RATEPAYER ADVOCATES
TO DISMISS AT&T CALIFORNIA'S "PETITION TO MODIFY D.01-09-058"**

In accordance with Rule 11.1 of the Commission's Rules of Practice and Procedure,
Pacific Bell Telephone Company ("AT&T California" or "AT&T") hereby submits its Response
to the Motion of The Utility Reform Network ("TURN") and the Division of Ratepayer
Advocates ("DRA") to Dismiss AT&T California's "Petition to Modify D.01-09-058."

INTRODUCTION

TURN and DRA's Motion to Dismiss claims that AT&T California has failed to meet its
"burden of proof" on topic "c" listed in the September 11, 2007 scoping ruling ("9/11/07 Ruling"
or "September 11 Ruling")¹ and therefore that AT&T California's "Petition to Modify D.01-09-
058" should be dismissed or AT&T California should be barred from addressing topic "c" in
reply testimony. TURN and DRA are wrong on both the law and facts.

¹ *Assigned Commissioner's and Administrative Law Judge's Ruling* (Sept. 11, 2007).

As to the law, AT&T California does not have a separate burden of proving that it has “reformed its processes and procedures to ensure that the abuses found in C.98-04-004 do not occur.” Motion to Dismiss at 3. AT&T California’s burden – as the 9/11/07 ruling plainly stated – is to prove, through any combination of relevant facts and circumstances, that the “requested modification to the [Commission’s prior] decision should be made.” 9/11/07 Ruling at 6. Such relevant facts or circumstances “*could*,” as the Commission pointed out, “include changes that AT&T has made to its marketing practices that would indicate that the marketing practices found to be abusive in the underlying decision D.01-09-058 would not occur on a prospective basis” (9/11/07 Ruling at 7 (emphasis added)). There is no separate burden to prove those specific types of changes in order to justify a modification of the prior decision.

As to the facts, AT&T California’s testimony *does* demonstrate how AT&T continues to improve its processes and procedures in this competitive market in ways that ensure that the abuses previously found by the Commission do not recur. For example, in her opening testimony, AT&T California witness Ms. Gomez described several tools that AT&T California has implemented since D.01-09-059 that guide service representatives in dealing with customers, and she explained that these tools “do not in any way allow or encourage” the type of practices previously found by the Commission to be abusive. Gomez Opening Testimony at 13. Ms. Gomez also explained that AT&T California service representatives receive extensive training that teaches them to first resolve the reason for the customer’s call, and then to offer the best value for the customer based on the customer’s needs *Id.* at 13-14. Service representatives also are trained to inform customers about the availability of stand-alone basic service at the start of the call and that the individual components of a bundle can be purchased separately. *Id.* at 26.

So, contrary to TURN and DRA's claim, Ms. Gomez's detailed testimony does address how AT&T California has "reformed its processes and procedures" since 2001.

TURN and DRA's alternative request – to prohibit AT&T California from submitting reply testimony on topic "c" – should also be denied. In addition to resting on the false premises that AT&T California has a separate burden of proof on topic "c" and presented no evidence on that topic, the alternative request is premature and speculative, as there is no basis for finding in advance that the testimony will be improper or exceed the scope of the TURN/DRA response testimony. The 9/11/07 Ruling specifies that AT&T California will be allowed to reply to the TURN and DRA testimony, and the only way to evaluate whether AT&T California's reply is proper would be to review the reply testimony itself. It would be unfair and prejudicial to make any ruling before the ink even hits the paper.

For these reasons, as explained further below, the Commission should deny the Motion to Dismiss filed by TURN and DRA as this Motion attempts to misconstrue the purpose of topic "c" of the 9/11/07 Ruling or otherwise short-circuit the deliberative process by which the Commission will reach a reasoned and record-based resolution of the pending issues.

ARGUMENT

A. THERE IS NO SEPARATE BURDEN OF PROOF ON THE QUESTION OF WHETHER AT&T CALIFORNIA HAS REFORMED ITS MARKETING PRACTICES.

As noted above and explained further below in part B, AT&T California submitted ample opening testimony to meet any alleged burden of going forward on topic "c," meaning the Motion to Dismiss should be denied. Moreover, TURN and DRA err as a matter of law in claiming there is an independent burden of proof on topic "c."

In its September 11 Ruling, the Commission held that AT&T California has the ultimate burden of proof in this case. That burden is to “demonstrat[e] that the requested modification to the decision [D.01-09-058] should be made.” 9/11/07 Ruling at 6. To help decide whether the modification is appropriate, the September 11 Ruling invited the parties to address various topics, including: (a) “Whether any events subsequent to the issuance of Decision (D.) 01-09-058 support the modifications made by the AT&T Advice Letters”; (b) “The relationship between the modifications to Tariff Rule 12 made by the Rule 12 Advice Letters and D.01-09-058 and subsequent decisions or resolutions modifying D.01-09-058”; (c) “Whether AT&T has reformed its processes and procedures to ensure that the abuses found in C.98-04-004 do not occur”; and (d) “The impact on consumers of AT&T’s removal of the disclosure language in its Rule 12 tariff.” 9/11/07 Ruling at 8.

In their Motion, TURN and DRA argue that the “Petition to Modify D.01-09-058” should be dismissed because AT&T California failed to meet its purported burden of proving topic “c.” Motion to Dismiss at 3. TURN and DRA thus contend that AT&T California bears a separate burden of proof on each topic outlined in the Commission’s September 11 Ruling and must win on each point or else lose entirely. In other words, TURN and DRA essentially treat the four topics like elements of a tort, each of which must be proven in order to win, or like separate issues in an arbitration, each of which has a separate burden of proof falling on one party or the other. But this is not that kind of case.

As the September 11 Ruling made clear, there are a variety of changed circumstances that might, alone or in combination, justify a modification to D.01-09-058. Indeed, that Ruling explicitly acknowledged that “AT&T may produce such evidence *as it believes will support the modification.*” 9/11/07 Ruling at 6 (emphasis added). To be sure, “[s]uch facts or circumstances

could include changes that AT&T has made to its marketing practices that would indicated that the marketing practices found to be abusive in the underlying decision D.01-09-058 would not occur on a prospective basis.” *Id.* at 7 (emphasis added). But there are other types of relevant evidence as well, and the September 11 Ruling never said that AT&T was *required* to prove the worthiness of any changes to its marketing practices in order to justify a modification of the prior decision. Rather, evidence of such changes is something, like evidence on topics “a”, “b”, and “d”, that might figure into the overall final analysis of whether AT&T California met the “burden of proof to modify [the Commission’s] past decision D.01-09-058.” 9/11/07 Ruling at 6.

In this regard, it is worth noting that TURN and DRA characterized AT&T California’s burden of proof the same way in their comments on the August 6, 2007 Ruling, where they argued that AT&T California must make a specific showing that the conditions/market practices that led the Commission to impose the Tariff Rule 12 requirements in D.01-09-058 no longer apply. 9/11/07 Ruling at 3 (Commission’s Summary of DRA/TURN Comments). The Commission rejected that argument in its September 11 Ruling and, to be consistent, should do so again here.

B. IN ANY EVENT, AT&T CALIFORNIA INTRODUCED SUBSTANTIAL EVIDENCE SHOWING THAT ITS PROCESSES AND PROCEDURES ENSURE THAT ABUSES DO NOT RECUR.

Putting aside their flawed burden of proof argument, TURN and DRA are wrong when they assert that “AT&T failed to address, much less provide any substantial evidence that it had in fact ‘reformed its processes and procedures to ensure that the abuses found in C.98-04-004 do not occur.’” Motion to Dismiss at 3. Subpart III B of Michelle O. Gomez’s testimony lays out the various processes and procedures in place that AT&T utilizes to meet customers’ needs and as a consequence will ensure that abuses will not occur.

Ms. Gomez noted that some of the new practices required by D.01-09-058, such as the requirement to resolve the reason for the call first and notify customers that services in packages can be purchased separately, currently remain in place. She also explained various processes and procedures developed by AT&T California since D.01-09-058, including Call Center Transformation Process, Sales Assistant, and Bundles Calculator. Ms. Gomez testified that these tools help ensure that the previous abuses found by the Commission do not occur again. For example, the Sales Assistant tool “uses customer-specific information to quickly provide the service representative with product and service options that are likely to be of most interest to the customer.” Gomez Opening Testimony at 12-13. By having this information available, service representatives are less likely to oversell or offer products that customers do not want or need. Bundles Calculator allows service representatives to respond to customer desires by quickly providing prices for bundles that most closely fit the customer’s needs as the customer describes them. Ms. Gomez further explained that AT&T California has developed a standardized call process, referred to as HOMERUN. *Id.* at 8-10. The “O” stands for “Obtain First Call Resolution,” and requires the service representative to handle the request right the first time, and make sure the reason for the customer’s call has been resolved. *Id.* at 9. The “R” stands for “Really Make a Quality Offer,” and requires the service representative to start with an offer that is the best value for the customer based on the customer’s described needs, rather than simply offering the highest priced bundle. *Id.* The “N” stands for “Need to Follow the Contact Guide,” and requires the service representative to cover all applicable disclosures. *Id.* at 10. Like the other training service representatives receive, HOMERUN helps ensure the prior abuses do not recur.

Ms. Gomez's testimony could not have been more clear. After describing the tools, she answered the following question:

Q17. WHAT ARE THE PURPOSES OF TOOLS LIKE SALES ASSISTANT AND BUNDLES CALCULATOR?

A17. They improve service and save time for both the customer and the service representative. *I am aware that the Commission had concerns about some of AT&T California's sales practices in 1998, but the tools in place today do not in any way allow or encourage such practices.* To begin with, we continue to inform new customers of the availability of stand-alone basic service at the start of the call. So, if customers want only that service, they know about it and can buy it. In addition, under the HOMERUN call process, the service representative recommends an offer that provides the best overall value to the customer based on that customer's specific needs.

Id. at 13-14 (emphasis added).

As the above demonstrates, contrary to TURN and DRA's assertion, AT&T California provided substantial evidence that it has in place processes and procedures to ensure that the abuses found in C.98-04-004 do not occur.

C. IT WOULD BE IMPROPER, PREMATURE, AND SPECULATIVE TO PROHIBIT AT&T CALIFORNIA FROM FILING REPLY TESTIMONY ON ANY TOPIC.

In the alternative, TURN and DRA argue that the Commission should "treat AT&T's failure to present its case on 'Issue c' in direct testimony as an admission by AT&T that it does not have processes and procedures in place to prevent the abuses found in C.98-04-004 from occurring in the future" and therefore "find against AT&T on this issue" and "prevent AT&T from addressing 'Issue c' in rebuttal testimony." Motion to Dismiss at 3. For the reasons explained above, this request should be rejected like the rest of the Motion. Furthermore, the attempt to bar AT&T California from filing reply testimony on certain topics is premature and speculative. As a matter of due process, and as the party with the ultimate burden of proof, and under the September 11 Ruling, AT&T California has the right to respond to whatever TURN

and DRA state in their testimony. Only after seeing their testimony and AT&T California's response could one even attempt to decide whether the response was really beyond the scope of proper rebuttal. There is no legitimate way to address that issue in the abstract today.

* * *

For these reasons, the Motion of TURN and DRA to Dismiss AT&T California's "Petition to Modify D.01-09-058" should be denied in full.

Respectfully submitted,

/s/

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Date: October 19, 2007

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CERTIFICATE OF SERVICE

I certify that a copy of this **RESPONSE OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) TO THE MOTION OF THE UTILITY REFORM NETWORK AND THE DIVISION OF RATEPAYER ADVOCATES TO DISMISS AT&T CALIFORNIA'S "PETITION TO MODIFY D.01-09-058"** has been served by e-mail on all known parties to **R.05-04-005/R.98-07-038** who have an e-mail address. Any party on the appearance or state service list that has not provided the Commission an electronic mail address was served by first class paper mail, a copy properly addressed to each party.

Executed at San Francisco, California, on this 19th day of October 2007:

_____/s/_____

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CALIFORNIA PUBLIC UTILITIES COMMISSION

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